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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JEROME MICHAEL FAILS,

Defendant and Appellant.

B205194

(Los Angeles County
Super. Ct. No. YA068318)

APPEAL from a judgment of the Superior Court of the Los Angeles County.
Lauren Weis Birnstein, Judge. Affirmed.

Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Kenneth C. Byrne and Colleen M. Tiedemann, Deputy Attorneys General, for Plaintiff and Respondent.

Jerome Michael Fails contends insufficient evidence was presented to support his conviction for possession of cocaine base for sale. Applying the well-settled principles underlying such a claim (see *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319), we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

At a jury trial, Tresia Rowland testified she was staying with Fails, her pimp, in room 131 of the Sea Breeze Motel on May 20, 2007. When Rowland told Fails she was going home, Fails hit her in the head with a wine bottle and punched her in the face several times. Fails did not let Rowland go home because he said he knew she would call the police.

Two days later, Rowland went to her day job and when her co-workers saw her injuries, her manager called the police. Rowland told Los Angeles Police Officer Eric Warken about the attack and added that Fails was selling cocaine from the motel room, which was secreted inside a light switch next to the door.

When Officer Warken saw Fails later in the day at the motel, he admitted he was staying in room 131. A hotel registration card confirmed this. After being arrested, Fails consented to a search of the motel room. A key to room 131 and \$126 in cash was found on his person. Behind the light switch next to the door, Officer Warken found two bags: one contained 18 individually wrapped pieces of cocaine base, the other contained one large piece, determined to be .34 grams of cocaine base. A narcotics expert opined Fails possessed the cocaine base for purposes of sale, based on his actions and given that the drugs were individually wrapped and hidden.

Fails' friend, Jonathan Neal, testified he "hung out" with Fails several times at the Sea Breeze Motel and never bought any drugs from him. Neal did not know if Fails sold drugs, however.

Fails was found guilty of possession for sale of cocaine base and sentenced to the middle term of four years in the state prison. A mistrial was declared on the two other counts with which was charged (assault with a deadly weapon (Pen. Code, § 245, subd.

(a)(1)); and criminal threats (Pen. Code, § 422)), after the jury was unable to reach verdicts on them.

DISCUSSION

I. Sufficient Evidence Supports the Judgment

Fails contends his conviction for possession of cocaine base for sale should be reversed as insufficient evidence supports his conviction. Fails contends all elements of the crime are lacking sufficiency – that he did not possess it, have knowledge of its presence or narcotic character and did not have the intent to sell it. (See *People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746.) Viewing the evidence in the light most favorable to the judgment, as we must (*People v. Mincey* (1992) 2 Cal.4th 408, 432), we find his contention lacks merit.

Circumstantial evidence demonstrated Fails constructively possessed the cocaine. (See *People v. Newman* (1971) 5 Cal.3d 48, 52, disapproved in part on other grounds in *People v. Daniels* (1975) 14 Cal.3d 857, 862.) Fails himself admitted he was staying in the room where the cocaine was found. He alone was the registered occupant and was found in possession of the key to the room. The fact that two other persons – the prostitutes who worked for him – shared the space with him does not undermine his conviction. (*People v. Rushing* (1989) 209 Cal.App.3d 618, 622.)

Likewise, sufficient evidence supports the element that Fails knew of the presence and narcotic nature of the cocaine. Rowland testified that Fails took the drugs in and out of the light switch where they were hidden. His hiding the drugs is sufficient to show the element of knowledge. (*People v. Tripp* (2007) 151 Cal.App.4th 951, 956.)

Finally, there is also sufficient of Fails intent to sell the drugs. Not only does the individual packaging of the 18 pieces of the cocaine base speak loudly to this element (see *People v. Campuzano* (1967) 254 Cal.App.2d 52, 55), but Officer Lopez's expert opinion back this up. Convictions for possession for sale are regularly found sufficient on the basis of expert testimony. (*People v. Harris* (2000) 83 Cal.App.4th 371, 375; *People v. Allen* (1967) 254 Cal.App.2d 597, 603.) But, uniquely here, Rowland testified *she saw* Fails sell drugs on a number of occasions. Though she recanted this testimony, the jury

was free to disbelieve the recantation. Given these circumstances, we do not find it difficult to say there was sufficient evidence to support the conviction.

DISPOSITION

The judgment is affirmed.

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BIGELOW, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.